

98TH CONGRESS
1ST SESSION

S. 979

To amend and reauthorize the Export Administration Act of 1979.

IN THE SENATE OF THE UNITED STATES

APRIL 6 (legislative day, APRIL 5), 1983

Mr. HEINZ (by request) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend and reauthorize the Export Administration Act of
1979.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 AMENDMENTS TO FINDINGS

4 SECTION 1. Section 2 of Public Law 96-72 is amended
5 as follows:

6 (1) by striking in paragraph (3), "which would
7 strengthen the Nation's economy.", and substituting in
8 lieu thereof, "consistent with the economic security,
9 and foreign policy objectives of the United States.";

10 (2) by striking paragraph (5), redesignating para-
11 graph (4) as paragraph (5), and redesignating para-

1 graphs (7) through (9) as paragraphs (8) through (10),
2 respectively; and

3 (3) by inserting after paragraph (3):

4 “(4) Availability from foreign sources of goods and
5 technology that are controlled by the United States to
6 protect its national security can adversely affect that
7 security.”; and

8 (4) by inserting after paragraph (6),

9 “(7) The transfer of critical commodities and tech-
10 nical data has made a significant contribution to the
11 military potential of other countries that has been det-
12 rimental to the security of the United States, its allies,
13 and other friendly nations, and has necessitated in-
14 creases in the defense budgets of these nations.”.

15 AMENDMENTS TO DECLARATION OF POLICY

16 SEC. 2. Section 3 of the Public Law 96-72 is amended
17 as follows:

18 (1) by striking in paragraph (3) the word “and”;

19 (2) by deleting in paragraph (3) the period which
20 ends the sentence, and adding in lieu thereof, “, and
21 (C) to negotiate bilaterally or multilaterally to elimi-
22 nate, whenever possible, the availability of goods and
23 technology from foreign sources that are present in suf-
24 ficient quantity and are of comparable quality with
25 those controlled or proposed to be controlled for na-

1 tional security purposes in the United States so as to
2 render the controls ineffective in achieving their pur-
3 poses.”;

4 (3) by redesignating paragraphs (10) and (11) as
5 paragraphs (11) and (12), respectively, and inserting
6 after paragraph (9);

7 “(10) It is the policy of the United States to seek
8 arrangements with those countries not participating in
9 the group known as the Coordinating Committee to re-
10 strict the export of United States goods and technology
11 that are controlled for national security reasons.”; and

12 (4) by adding new paragraphs (13) and (14) as fol-
13 lows:

14 “(13) It is the policy of the United States when
15 imposing new foreign policy controls to minimize the
16 impact of preexisting contracts and on business activi-
17 ties in allied or other friendly countries to the extent
18 consistent with the underlying purpose of the controls.

19 “(14) It is the policy of the United States to de-
20 velop licensing mechanisms to minimize the burdens
21 placed on United States export trade, particularly
22 United States export trade with member countries of
23 COCOM, Australia, and New Zealand.”.

1 AMENDMENTS TO GENERAL PROVISIONS

2 SEC. 3. Section 4 of Public Law 96-72 is amended as
3 follows:

4 (1) by deleting in paragraph (2) in subsection (a).

5 “A qualified general license,” and substituting in lieu
6 thereof “Licenses”;

7 (2) by modifying subsection (b) to read as follows:

8 “(b) CONTROL LIST.—The Secretary shall establish
9 and maintain a list (hereinafter in this Act referred to as the
10 ‘Control List’) indicating license requirements for exports to
11 various countries of destination subject to control under this
12 Act.”; and

13 (3) by deleting in subsection (c) “significant” and
14 substituting in lieu thereof “sufficient”, and inserting
15 after “to those produced in the United States” the
16 words “so as to render the controls ineffective in
17 achieving their purposes”.

18 AMENDMENTS TO NATIONAL SECURITY CONTROLS

19 SEC. 4. Section 5 of Public Law 96-72 is amended as
20 follows:

21 (1) in paragraph (1) of subsection (a), by inserting
22 after the first sentence, “This authority includes the
23 power to prohibit or curtail the transfer of goods or
24 technologies within the United States to embassies and

1 affiliates of countries to which exports of these goods
2 or technologies are controlled.”;

3 (2) by deleting subparagraph (B) in paragraph (2)
4 of subsection (a) and by striking “(A)” before the first
5 sentence of paragraph (2) of subsection (a);

6 (3) by deleting the word “commodity” in the first
7 sentence of paragraph (1) in section (c), and by deleting
8 the second sentence in that paragraph and substituting
9 in lieu thereof: “The Secretary shall clearly identify on
10 the control list which goods and technical data and
11 countries or destinations are subject to which types of
12 controls under this section.”;

13 (4) by modifying the heading of subsection (d) to
14 read “Militarily Critical Goods and Technologies.”;

15 (5) by modifying subparagraph (B) of paragraph
16 (2) in subsection (d) to read “keystone materials and
17 manufacturing, inspection, and test equipment, and”;

18 (6) by deleting the word “commodity” in para-
19 graph (5) of subsection (d);

20 (7) by redesignating paragraph (6) of subsection
21 (d) as paragraph (7), and inserting after paragraph (5):

22 “(6) The establishment of adequate export controls for
23 militarily critical technology and keystone equipment shall be
24 accompanied by suitable reductions in the controls over the
25 products of that technology and equipment.”;

1 (8) by deleting subsection (e) in its entirety, and
2 redesignating subsections (f) through (l) as (e) through
3 (k), respectively;

4 (9) in paragraph (1) of subsection (e), as redesign-
5 ated, by striking “sufficient quality” and substituting
6 in lieu thereof “comparable quality”;

7 (10) in paragraph (2) of subsection (e), as redesign-
8 ated, by striking “sufficient quality” and substituting
9 in lieu thereof “comparable quality”;

10 (11) by redesignating paragraphs (3) through (6)
11 in subsection (e), as redesignated, as (4) through (7),
12 respectively, and adding a new paragraph (3) as fol-
13 lows:

14 “(3) The mere capacity of a foreign country to produce
15 items in sufficient quantity and of comparable quality with
16 those controlled by the United States, so as to render the
17 controls ineffective in achieving their purposes, does not, in
18 and of itself, constitute foreign availability.”;

19 (12) by striking in the first sentence of paragraph
20 (5) of subsection (e), as redesignated, “take steps to
21 initiate” and substituting in lieu thereof “actively
22 pursue”;

23 (13) in section (f), as redesignated—

24 (a) by striking “and qualified general li-
25 censes” in the first sentence,

1 (b) by inserting at the end of the first sen-
2 tence, "The regulations issued by the Secretary
3 shall establish as one criterion for the removal of
4 goods or technology the anticipated needs of the
5 military of countries to which exports are con-
6 trolled for national security purposes.", and

7 (c) by deleting from the existing second sen-
8 tence "by the latest such increase" and substitut-
9 ing in lieu thereof "by the regulations";

10 (14) by striking in paragraph (6) of subsection (g),
11 as redesignated, "(f)(1)", and substituting in lieu there-
12 of "(e)(1)";

13 (15) by striking in paragraph (1) of subsection (h),
14 as redesignated, "agreement of the Committee," where
15 it appears the second time and substituting in lieu
16 thereof "list,";

17 (16) by striking in paragraph (2) of subsection (h),
18 as redesignated, "discussing export control policy
19 issues and issuing policy guidance" and substituting in
20 lieu thereof "providing guidance on export control
21 policy issues";

22 (17) by striking in paragraph (3) of subsection (h),
23 as redesignated, "reduce" and substituting in lieu
24 thereof "modify";

1 (18) by inserting in paragraph (4) of subsection
2 (h), as redesignated, after “effective procedures for”
3 the words “administering and”;

4 (19) by inserting after paragraph (4) of subsection
5 (h), as redesignated, paragraphs (5) and (6) as follows:

6 “(5) Agreement to improve the International Control
7 List and minimize the approval of exceptions to that list,
8 strengthen enforcement and cooperation in enforcement ef-
9 forts, provide sufficient funding for COCOM, and improve the
10 structure and function of the COCOM Secretariat by upgrad-
11 ing professional staff, translation services, data base mainte-
12 nance, communications, and facilities.

13 “(6) Agreement to strengthen COCOM so that it func-
14 tions effectively in controlling export trade in a manner that
15 better protects the national security of each participant to the
16 mutual benefit of all.”;

17 (20) by inserting in subsection (j), as redesignated,
18 after “other countries” the words “, including those
19 countries not participating in the group known as the
20 Coordinating Committee,” by striking “policy” and
21 substituting in lieu thereof “policies”, and by striking
22 “section 3(9)” and inserting in lieu thereof “sections
23 3(9) and 3(10)”;

1 (21) by inserting after "Munitions List" in para-
2 graph (2) of subsection (k), as redesignated, "or the
3 military use of any item on the COCOM List".

4 AMENDMENTS TO FOREIGN POLICY CONTROLS

5 SEC. 5. Section 6 of Public Law 96-72 is amended as
6 follows:

7 (1) by deleting in subsection (c) "with such affect-
8 ed United States industries as the Secretary considers
9 appropriate," and substituting in lieu thereof "as ap-
10 propriate with affected United States industries";

11 (2) by inserting after the first sentence in subsec-
12 tion (f) "This section also does not authorize export
13 controls on donations of articles, such as food and
14 clothing, intended to be used to relieve human suffer-
15 ing, except to the extent that the President determines
16 that such donations are in response to coercion against
17 the proposed recipient or donor.";

18 (3) by striking in the first sentence of subsection
19 (k) the word "commodity";

20 (4) by striking the second sentence of subsection
21 (k) and substituting in lieu thereof "The Secretary shall
22 clearly identify on the control list which goods and
23 technical data and countries or destinations are subject
24 to which types of controls under this section."; and

1 (5) by adding at the end of section 6 a new sub-
2 section as follows:

3 “(1) SANCTITY OF CONTRACT.—The President shall not
4 prohibit or curtail the export of any good or technology that
5 is controlled under this section if such goods or technology is
6 to be exported pursuant to a sales contract (1) entered into
7 before the President places the export under control, and (2)
8 the terms of which require delivery of the export within 270
9 days after the control is imposed, except that the President
10 may prohibit or curtail such export if he determines that not
11 prohibiting or curtailing such export would prove detrimental
12 to the overriding national interests of the United States.”.

13 AMENDMENTS TO SHORT SUPPLY CONTROLS

14 SEC. 6. Section 7 of Public Law 96–72 is amended by
15 deleting in their entirety subsections (c), (e), (f), (h), (i), and
16 (j), by deleting paragraphs (1) and (2) of subsection (d), by
17 redesignating paragraph (3) of subsection (d) as subsection
18 (c), and by redesignating subsection (g) as subsection (d).

19 AMENDMENTS TO PROCEDURES FOR PROCESSING EXPORT
20 LICENSE APPLICATIONS

21 SEC. 7. Section 10 of Public Law 96–72 is amended as
22 follows:

23 (1) by striking in the first sentence of subsection
24 (b) “10” and substituting in lieu thereof “14”;

1 (2) by striking in subsection (c) “90” and substi-
2 tuting in lieu thereof “60”; and

3 (3) by inserting in paragraph (3) in subsection (f)
4 after “the policies set forth in section 3 of the Act
5 which would be furthered by denial,” and before “and,
6 to the extent consistent with the national security” the
7 following: “what, if any, modifications in or restrictions
8 on the goods or technology for which the license was
9 sought would allow such export to be compatible with
10 controls imposed under this Act,”.

11 AMENDMENTS TO VIOLATIONS PROVISIONS

12 SEC. 8. Section 11 of Public Law 96-72 is amended as
13 follows:

14 (1) by inserting in paragraph (a) after “violates”
15 the following “or conspires to or attempts to violate”;

16 (2) by deleting in paragraph (1) in subsection (b)
17 “exports anything contrary to” and substituting in lieu
18 thereof “violates or conspires to or attempts to vio-
19 late”;

20 (3) by inserting in paragraph (1) in subsection (b)
21 after “benefit of” the following, “or that the destina-
22 tion or intended destination of the goods or technology
23 involved is”, and by striking “restricted” and substitut-
24 ing in lieu thereof “controlled”;

1 (4) by adding at the end of paragraph (1) in sub-
2 section (b) the sentence “For purposes of this subsec-
3 tion, a country to which exports are controlled for na-
4 tional security purposes is one identified pursuant to
5 the determinations made in accordance with subsection
6 5(b) of this Act,”;

7 (5) by inserting after paragraph (2) in subsection
8 (b) the following paragraphs:

9 “(3) Whoever possesses any goods or technology with
10 the intent to export them contrary to this Act or any regula-
11 tion, order, or license issued thereunder shall be subject to
12 the penalties as provided in subsection 11(a), except for a
13 national security violation which would be subject to the pen-
14 alties as provided in subsection 11(b)(1).

15 “(4) Nothing in this subsection or subsection (a) shall
16 limit the power of the Secretary to define by regulations vio-
17 lations under this Act.”;

18 (6) by inserting after paragraph (2) in subsection (c) the
19 following new paragraph:

20 “(3) Whoever violates any national security control im-
21 posed under section 5 of this Act, or any regulation, order, or
22 license related thereto, may be subject to such controls on the
23 importing of its goods or technology into the United States or
24 its territories and possessions as the President may pre-
25 scribe.”;

1 (7) by inserting in subsection (e) after “subsection (c)”
 2 the words “or any amounts realized from the forfeiture of
 3 property interest or proceeds forfeited pursuant to subsection
 4 (f)”, and by inserting after “refund any such penalty” the
 5 words “imposed pursuant to subsection (c)”;

6 (8) by redesignating subsections (f) and (g) as subsec-
 7 tions (g) and (i), respectively;

8 (9) by inserting after subsection (e):

9 “(f) FORFEITURE OF PROPERTY INTEREST AND PRO-
 10 CEEDS.—(1) Whoever has been convicted of a national secu-
 11 rity export control violation under subsection (a) or (b) shall,
 12 in addition to any other penalty, forfeit to the United States:

13 “(A) any of his interest in, security of, claim
 14 against, or property or contractual rights of any kind
 15 in the goods or technology that were the subject of the
 16 violation;

17 “(B) any of his interest in, security of, claim
 18 against, or property or contractual rights of any kind
 19 in property that was used to facilitate the commission
 20 of the violation; and

21 “(C) any of his property constituting, or derived
 22 from, any proceeds obtained directly or indirectly as a
 23 result of such violations.

24 “(2) The procedures in any criminal forfeiture under this
 25 section, and the duties and authority of the courts of the

1 United States and the Attorney General with respect to any
 2 criminal forfeiture action under this section or with respect to
 3 any property that may be subject to forfeiture under this sec-
 4 tion, are to be governed by the provisions of section 1963 of
 5 title 18, United States Code.”;

6 (10) by inserting after subsection (g), as redesignig-
 7 nated, the following paragraph:

8 “(h) PRIOR CONVICTIONS.—No person convicted of es-
 9 pionage under title 18, United States Code, section 793, 794,
 10 or 798, title 50, United States Code, section 783(b), or the
 11 Arms Export Control Act, title 22, United States Code, sec-
 12 tion 2778, shall be eligible, at the discretion of the Secretary,
 13 to apply for, or use, any export license during a period of up
 14 to 10 years from the date of conviction. Any outstanding
 15 export licenses in which such a person has an interest may be
 16 revoked, at the discretion of the Secretary, at the time of
 17 conviction.”; and

18 (11) by striking “or” after “(d),” in the introduc-
 19 tory language that precedes paragraph (1) in subsection
 20 (i), as redesignated, and inserting after “(f)”, “, (g) or
 21 (h)”.

22 AMENDMENTS TO ENFORCEMENT PROVISIONS

23 SEC. 9. Section 12 of Public Law 96-72 is amended as
 24 follows:

1 (1) by striking in subsection (e) “section 5(h)” and
2 substituting in lieu thereof “section 5(g)”; and

3 (2) by striking in subsection (e) “commodity”.

4 AMENDMENTS TO ANNUAL REPORT

5 SEC. 10. Section 14 of Public Law 96-72 is amended
6 as follows:

7 (1) in subsection (a)—

8 (a) by deleting paragraph (6) in its entirety,
9 and by redesignating paragraphs (7) through (20)
10 as paragraphs (6) through (19), respectively;

11 (b) by striking “section 5(f)” in paragraph
12 (6), as redesignated, and substituting in lieu there-
13 of “section 5(e)”;

14 (c) by striking “section 5(f)(5)” in paragraph
15 (7), as redesignated, and substituting in lieu there-
16 of “section 5(e)(6)”;

17 (d) by striking “section 5(g)” in paragraph
18 (8), as redesignated, and substituting in lieu there-
19 of “section 5(f)”;

20 (e) by striking “section 5(h)” in paragraph
21 (9), as redesignated, and substituting in lieu there-
22 of “section 5(g)”;

23 (f) by striking “section 4(e)” in paragraph
24 15, as redesignated, and substituting in lieu there-
25 of “section 4(d)”;

1 (2) by striking “section 5(i)” in subsection (c) and
2 substituting in lieu thereof “section 5(h)”.

3 AMENDMENTS TO EFFECT ON OTHER ACTS

4 SEC. 11. Section 17 of Public Law 96-72 is amended—

5 (1) by striking the last sentence in subsection (c)
6 and substituting in lieu thereof: “For purposes of this
7 subsection, the term ‘controlled country’ means any
8 country to which exports are controlled under section 5
9 of this Act because of a finding that a significant con-
10 tribution to the military potential of that country would
11 prove detrimental to the national security of the United
12 States,”; and

13 (2) by deleting in paragraph (2) of subsection (d),
14 “that they are consistent with such published proce-
15 dures, except”.

16 AMENDMENTS TO AUTHORIZATION OF APPROPRIATIONS

17 SEC. 12. Section 2417 of title 50, Appendix, United
18 States Code, is amended by striking paragraph (1) of section
19 (b) and substituting in lieu thereof:

20 “(1) such sums as may be necessary for each of
21 the fiscal years 1984, 1985, 1986, and 1987, and”.

22 AMENDMENTS TO TERMINATION DATE

23 SEC. 13. Section 20 of Public Law 96-72 is amended
24 by deleting “1983” and substituting “1987”.



1 AMENDMENTS TO TERMINATION DATE

2 ~~SEC. 13.~~ Section 20 of Public Law 96-72 is amended
 3 by deleting “1983” and substituting “1987”.

4 *That this Act may be cited as the “Export Administration*
 5 *Act Amendments of 1983”.*

6 FINDINGS

7 SEC. 2. Section 2 of the *Export Administration Act of*
 8 *1979 is amended—*

9 (1) *by striking paragraph (6) and inserting in*
 10 *lieu thereof the following:*

11 “(6) *Uncertainty of export control policy can in-*
 12 *hibit the efforts of American business and work to the*
 13 *detriment of the overall attempt to improve the trade*
 14 *balance of the United States.”; and*

15 (2) *by adding at the end of the section the follow-*
 16 *ing new paragraph:*

17 “(10) *The transfer of national security sensitive*
 18 *technology and goods to the Soviet Union and other*
 19 *countries where actions or policies are adverse to the*
 20 *national security interests of the United States, has led*
 21 *to the significant enhancement of Soviet bloc military-*
 22 *industrial capabilities, thereby creating a greater threat*
 23 *to the security of the United States, its allies, and*
 24 *other friendly nations, and increasing the defense*
 25 *budget of the United States.”.*

DECLARATION OF POLICY

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SEC. 3. Section 3 of the Export Administration Act of 1979 is amended—

(1) in paragraph (3), by striking out the period after “commitments” and inserting in lieu thereof “or common strategic objectives.”;

(2) in paragraph (7), by striking “every reasonable effort” in the second sentence and inserting in lieu thereof “reasonable and prompt efforts”, and by striking “resorting to the imposition of controls on exports from the United States” in the second sentence and inserting in lieu thereof “imposing export controls”;

(3) in paragraph (8), by striking “every reasonable effort” in the second sentence and inserting in lieu thereof, “reasonable and prompt efforts”, and by striking “resorting to the imposition of export controls.” at the end of the paragraph and inserting in lieu thereof “imposing export controls.”;

(4) in paragraph (9), by inserting “or common strategic objectives” after “commitments” each time it appears; and

(5) by adding after paragraph (11) the following:

“(12) It is the policy of the United States to encourage other friendly countries to cooperate in restrict-

1 *ing the sale of goods and technology that can harm the*
2 *security of the United States.*

3 “(13) It is the policy of the United States to sus-
4 tain vigorous scientific enterprise. To do so requires
5 protecting the ability of scientists and other scholars
6 freely to communicate their research findings by means
7 of publication, teaching, conferences, and other forms of
8 scholarly exchange.”.

9 *GENERAL PROVISIONS*

10 *SEC. 4. Section 4 of the Export Administration Act of*
11 *1979 is amended—*

12 (1) in subsection (a) by striking paragraph (2)
13 and inserting in lieu thereof the following:

“(2) *Validated licenses authorizing multiple ex-
ports, issued pursuant to an application by the export-
er, in lieu of an individual validated license for each
such export, including, but not limited to the following:*

18 “(A) A distribution license, authorizing ex-
19 ports of goods to approved distributors or users of
20 the goods;

21 “(B) A comprehensive operations license,
22 authorizing exports and reexports of technology
23 and related goods, including items on the list of
24 militarily critical technologies developed pursuant
25 to subsection (d) of this section, from a domestic

1 *concern to and among its subsidiaries, affiliates,*
2 *or other approved consignees that have long-term,*
3 *contractually defined relations with the exporter.*
4 *The Secretary shall grant the license to manufac-*
5 *turing, laboratory, or related operations on the*
6 *basis of approval of the exporter's system of con-*
7 *trol, including internal proprietary controls, appli-*
8 *cable to the technology and related goods to be ex-*
9 *ported rather than approval of individual export*
10 *transactions. The Commissioner of Customs, in*
11 *cooperation with the Secretary periodically, but*
12 *not less frequently than annually, shall perform.*
13 *audits of these licensing procedures to assure their*
14 *integrity and effectiveness.”;*

15 (2) in subsection (b), by striking “commodity”
16 *each time it appears, and by striking “consisting of*
17 *any goods or technology subject to export controls*
18 *under this Act.” and inserting in lieu thereof “stating*
19 *license requirements for exports of goods and technol-*
20 *ogies to all destinations to which such exports are con-*
21 *trolled under this Act.”;*

22 (3) in subsection (c), by striking “significant”
23 *and inserting in lieu thereof “comparable”, and by in-*
24 *serting after “those produced in the United States,” the*

1 following: "so as to render the controls ineffective in
2 achieving their purposes,";

3 (4) by adding at the end of subsection (c) the fol-
4 lowing: "The Secretary and the Secretary of Defense
5 shall cooperate in the gathering and assessment of in-
6 formation relating to foreign availability, including the
7 establishment and maintenance of a jointly operated
8 computer system."; and

9 (5) by striking subsection (f) and inserting in lieu
10 thereof the following:

11 "(f) NOTIFICATION OF THE PUBLIC: CONSULTATION
12 WITH BUSINESS.—(1) The Secretary shall keep the public
13 fully apprised of changes in export control policy and proce-
14 dures instituted in conformity with this Act with a view to
15 encouraging trade. The Secretary shall meet regularly with
16 representatives of a broad spectrum of enterprises, labor orga-
17 nizations, and citizens interested in or impacted by export
18 controls, on the United States export control policy and the
19 foreign availability of goods and technology.

20 "(2) In carrying out the provisions of this Act, the Sec-
21 retary shall consult on a continuing basis with the advisory
22 committees established under section 135 of the Trade Act of
23 1974."

1 NATIONAL SECURITY CONTROLS

2 SEC. 5. Section 5 of the Export Administration Act of
3 1979 is amended—

4 (1) by inserting after the first sentence of subsec-
5 tion (a)(1) the following: “This authority includes the
6 power to prohibit or curtail reexports of such goods and
7 technologies and the transfer of goods or technologies
8 within the United States to embassies and affiliates of
9 countries to which exports of these goods or technologies
10 are controlled.”;

11 (2) in subsection (a)(2), by striking “(A)”, and
12 by striking paragraph (B) in its entirety;

13 (3) in subsection (a)(3), by striking the last
14 sentence;

15 (4) in subsection (b) by inserting after “as”, the
16 following: “whether its policies are adverse to the na-
17 tional security interests of the United States,”;

18 (5) in subsection (c), by striking “commodity” in
19 paragraph (1) and by striking paragraph (3) and in-
20 serting in lieu thereof the following:

21 “(3) The Secretary shall review the list established pur-
22 suant to this subsection at least once each year in order to
23 carry out the policy set forth in section 3(2)(A) and the provi-
24 sions of this section, and shall promptly make such revisions
25 of the list as may be necessary after each such review. The

1 *Secretary shall publish notice of each annual review in the*
2 *Federal Register before he begins such review, provide oppor-*
3 *tunity for comment and submission of data, with or without*
4 *oral presentation, by interested Government agencies and*
5 *other affected or potentially affected parties during such*
6 *review, and publish any revisions in the list, with an expla-*
7 *nation of the reasons therefor, in the Federal Register. The*
8 *Secretary shall further assess, as part of such review, the*
9 *availability from sources outside the United States, or any of*
10 *its territories or possessions, of goods and technology compa-*
11 *rable to those controlled under this section.”;*

12 *(6) in subsection (d)(2), by striking “and” at the*
13 *end of subparagraph (B), by adding “and” at the end*
14 *of subparagraph (C), and by inserting after subpara-*
15 *graph (C) a new subparagraph (D), as follows:*

16 *“(D) goods (i) which would extend, complete,*
17 *maintain, or modernize a process line employed in the*
18 *application of a militarily critical technology, or (ii)*
19 *the analysis of which would reveal or give insight into*
20 *a United States military system and would thereby fa-*
21 *cilitate either the design and manufacture of that*
22 *system or the development of countermeasures against*
23 *that system,”;*

1 (7) in paragraph (2) of subsection (d), by insert-
2 ing after “possessed by” the following: “or available in
3 fact from sources outside the United States to”;

4 (8) in paragraph (4) of subsection (d), by striking
5 “October 1, 1980” and inserting in lieu thereof “Jan-
6 uary 1, 1985”;

7 (9) in paragraph (5), by striking “The” and in-
8 serting in lieu thereof “Items on the”; by striking
9 “commodity”, and by inserting “and subsection (f)”
10 after “subsection (c)”.

11 (10) in paragraph (6) of subsection (d) by strik-
12 ing “subsection” and inserting in lieu thereof “sec-
13 tion”;

14 (11) by adding at the end of subsection (d) a new
15 paragraph (7) as follows:

16 “(7) The establishment of adequate export controls for
17 militarily critical technology and keystone equipment shall be
18 accompanied by suitable reductions in the controls over the
19 products of that technology and equipment.”;

20 (12) in paragraph (1) of subsection (e), by strik-
21 ing “a qualified general license” and inserting in lieu
22 thereof “the multiple validated export licenses described
23 in section 4(a)(2) of this Act”;

24 (13) by striking paragraphs (3) and (4) of subsec-
25 tion (e) and inserting in lieu thereof the following:

1 “(3) *The Secretary shall require only a general license*
2 *in lieu of a multiple or individual validated license under*
3 *this section for the export of goods or technology to countries*
4 *party to a multilateral agreement, formal or informal, to*
5 *which the United States is a party, or to countries party to a*
6 *comparable bilateral agreement with the United States, if the*
7 *export of such goods or technology is restricted pursuant to*
8 *such multilateral or bilateral agreement, unless the goods or*
9 *technology are included on the list of military critical tech-*
10 *nologies developed pursuant to subsection (d) of this section,*
11 *in which case the Secretary may require a multiple or indi-*
12 *vidual validated license.*

13 “(4) *The Secretary, subject to the provisions of subsec-*
14 *tion (l), shall not require an individual validated export li-*
15 *cense for replacement parts which are exported to replace on*
16 *a one-for-one basis parts that were in a commodity that has*
17 *been lawfully exported from the United States.*

18 “(5) *The Secretary shall periodically review the various*
19 *special licensing procedures, taking appropriate action to in-*
20 *crease their utilization by reducing qualification require-*
21 *ments or lowering minimum thresholds, to combine proce-*
22 *dures which overlap, and to eliminate those procedures which*
23 *appear to be of marginal utility.”;*

1 (14) in paragraph (1) of subsection (f), by insert-
2 ing after "The Secretary, in consultation with" the fol-
3 lowing: "the Secretary of Defense and other";

4 (15) in paragraphs (1) and (2) of subsection (f),
5 by striking "sufficient" each time it appears and in-
6 serting in lieu thereof "comparable";

7 (16) in subsection (f), by striking paragraph (3)
8 and inserting in lieu thereof the following:

9 “(3) The Secretary shall make a foreign availability
10 determination under paragraph (1) or (2) on his own initia-
11 tive or upon receipt of an allegation that such availability
12 exists from an export license applicant. The Secretary shall
13 accept the applicant's representations made in writing and
14 supported by evidence, unless such representations are con-
15 tradicted by reliable evidence, including scientific or physical
16 examination, expert opinion based upon adequate factual in-
17 formation, or intelligence information. Determination of for-
18 eign availability by the Secretary may include but not be
19 limited to consideration of the following factors: cost, reliabil-
20 ity, the availability and reliability of spare parts and the cost
21 and quality thereof, maintenance programs, technical data
22 packages, backup packages, durability, quality of end prod-
23 ucts produced by the item proposed for export, and scale of
24 production.”;

1 (17) in subsection (f), by adding a new paragraph
2 (7) as follows:

3 “(7) The Secretary shall make a foreign availability
4 determination under paragraph (1) upon request of the ap-
5 propriate technical advisory committee established by subsec-
6 tion (h)(1) of this section. The Secretary shall treat the repre-
7 sentations of the technical advisory committee in the manner
8 provided in paragraph (3).”;

9 (18) in paragraph (4) of subsection (f), by strik-
10 ing “take steps to initiate” and inserting in lieu there-
11 of, “actively pursue”;

12 (19) by striking subsection (g) and inserting in
13 lieu thereof the following:

14 “(g) INDEXING.—In order to ensure that requirements
15 for validated licenses and multiple export licenses are peri-
16 odically removed as goods or technology subject to such re-
17 quirements becomes obsolete with respect to the national secu-
18 rity of the United States, regulations issued by the Secretary
19 may, where appropriate, provide for annual increases in the
20 performance levels of goods or technology subject to any such
21 licensing requirement. The regulations issued by the Secre-
22 tary shall establish as one criterion for the removal of goods
23 or technology the anticipated needs of the military of coun-
24 tries to which exports are controlled for national security pur-
25 poses. Any such goods or technology which no longer meets

1 *the performance levels established by the regulations shall be*
 2 *removed from the list established pursuant to subsection (c) of*
 3 *this section unless, under such exceptions and under such*
 4 *procedures as the Secretary shall prescribe, any other depart-*
 5 *ment or agency of the United States objects to such removal*
 6 *and the Secretary determines, on the basis of such objection,*
 7 *that the goods or technology shall not be removed from the*
 8 *list. The Secretary shall also consider, where appropriate,*
 9 *removing site visitation requirements for goods and technol-*
 10 *ogy which are removed from the list unless objections de-*
 11 *scribed in this subsection are raised.”;*

12 *(20) in paragraph (1) of subsection (h), by adding*
 13 *after “Departments of Commerce, Defense, and State”*
 14 *the following: “, the intelligence community,”;*

15 *(21) in paragraph (2) of subsection (h), by strik-*
 16 *ing “and” at the end of paragraph (C), by striking the*
 17 *period at the end of subparagraph (D) and inserting in*
 18 *lieu thereof a comma and the following: “and (E) any*
 19 *other questions relating to actions designed to carry out*
 20 *the policy set forth in section 3(2)(A) of this Act.”;*

21 *(22) by striking paragraph (6) of subsection (h);*

22 *(23) in subsection (i), by striking paragraph (3);*

23 *(24) in subsection (i)(4), by striking “(4)” and*
 24 *inserting in lieu thereof “(3)”, and by striking “pursu-*

1 *ant to paragraph (3)” and inserting in lieu thereof “by*
 2 *the members of the Committee.”;*

3 *(25) in subsection (i), by adding new paragraphs*
 4 *(4), (5), and (6) as follows:*

5 *“(4) Agreement to accord the current multilateral*
 6 *agreement treaty status.*

7 *“(5) Agreement to improve the International Con-*
 8 *trol List and minimize the approval of exceptions to*
 9 *that list, strengthen enforcement and cooperation in en-*
 10 *forcement efforts, provide sufficient funding for*
 11 *COCOM, and improve the structure and functions of*
 12 *the COCOM Secretariat by upgrading professional*
 13 *staff, translation services, data base maintenance, com-*
 14 *munications and facilities.*

15 *“(6) Agreement to strengthen COCOM so that it*
 16 *functions effectively in controlling export trade in a*
 17 *manner that better protects the national security of*
 18 *each participant to the mutual benefit of all.”;*

19 *(26) by striking subsection (j) and inserting in*
 20 *lieu thereof the following:*

21 *“(j) COMMERCIAL AGREEMENTS WITH CERTAIN*
 22 *COUNTRIES.—(1) Any United States firm, enterprise, or*
 23 *other nongovernmental entity which enters into any agree-*
 24 *ment with any agency of the government of a country to*
 25 *which exports are restricted for national security purposes,*

1 *which calls for the encouragement of technical cooperation*
 2 *and is intended to result in the export from the United States*
 3 *to the other party of unpublished technical data of United*
 4 *States origin, shall report the agreement with such agency*
 5 *with sufficient detail to the Secretary.*

6 “(2) *The provisions of paragraph (1) shall not apply to*
 7 *colleges, universities, or other educational institutions, except*
 8 *where the unpublished technical data involve a technology*
 9 *identified by the Secretary of Defense as a militarily critical*
 10 *technology.*

11 (27) *in subsection (k), by adding after “with other*
 12 *countries” the following: “, including those countries*
 13 *not participating in the group known as the Coordinat-*
 14 *ing Committee,”* and by adding at the end thereof the
 15 *following: “In cases where such negotiations produce*
 16 *agreement on export restrictions comparable in practice*
 17 *to those maintained by the Coordinating Committee,*
 18 *the Secretary shall treat exports to countries party to*
 19 *such agreements in the same manner as exports to*
 20 *members of the Coordinating Committee are treated.”;*

21 (28) *by striking subsection (l) and inserting in*
 22 *lieu thereof the following:*

23 “(l) *DIVERSION TO MILITARY USE OF CONTROLLED*
 24 *GOODS OR TECHNOLOGY.—Whenever there is reliable evi-*
 25 *dence that goods or technology which were exported subject to*

1 *national security controls under this section to a country to*
2 *which exports are controlled for national security purposes*
3 *have been diverted to an unauthorized use or consignee in*
4 *violation of the conditions of an export license, the Secretary*
5 *for as long as that diversion continues—*

6 “(A) shall deny all further exports to or by the
7 *party or parties who divert or conspire to divert any*
8 *goods or technology subject to national security controls*
9 *under this section to an unauthorized use or consignee*
10 *regardless of whether such goods or technology are*
11 *available to that country from sources outside the*
12 *United States; and*

13 “(B) may take such additional steps under this
14 *Act with respect to the party or parties referred to in*
15 *subparagraph (A) as he determines are appropriate in*
16 *the circumstances to deter the further unauthorized use*
17 *of the previously exported goods or technology.*

18 “(2) As used in this subsection, the term ‘diversion to
19 *an unauthorized use or consignee’ means the use of United*
20 *States goods or technology to design or produce or maintain*
21 *or contribute to the design, production, or maintenance of any*
22 *item on the United States Munitions List, or the transfer of*
23 *United States goods or technology to any consignee or end*
24 *user engaged in or contributing to such design, production, or*

1 maintenance, or the military use of any item on the
2 COCOM list.”; and

3 (29) by adding the following new subsections:

4 “(m) SECURITY MEASURES.—The Commissioner of
5 Customs, in consultation with the Secretary and the Director
6 of the Federal Bureau of Investigation, shall provide advice
7 and technical assistance to persons engaged in the manufac-
8 ture or handling of goods or technology subject to controls
9 under this section to develop security systems to prevent vio-
10 lations or evasion of controls imposed under this section.

11 “(n) RECORDKEEPING.—The Secretary, the Secretary
12 of Defense, and any other department or agency consulted in
13 connection with a license application or revision of a list of
14 controlled commodities, goods, or technologies, shall make
15 and keep records of their respective advice, recommendations,
16 or decisions, including the factual and analytical basis of the
17 advice, recommendations, or decisions.

18 “(o) NATIONAL SECURITY CONTROL AGENCY.—To
19 assist in carrying out the policy and other authorities and
20 responsibilities of the Secretary of Defense under this sec-
21 tion, there shall be established within the office of the Under
22 Secretary of Defense for Policy a National Security Control
23 Agency. The Secretary of Defense may delegate such of those
24 authorities and responsibilities, together with such ancillary
25 functions, as he may deem appropriate to the Agency.

1 “(p) *EXCLUSION FOR AGRICULTURAL COMMOD-*
 2 *ITIES.—This section does not authorize export controls on*
 3 *agricultural commodities, including fats and oils or animal*
 4 *hides and skins.*”.

5 *FOREIGN POLICY CONTROLS*

6 *SEC. 6. Section 6 of the Export Administration Act of*
 7 *1979 is amended—*

8 (1) *by inserting after the first sentence of para-*
 9 *graph (1) of subsection (a) the following: “Whenever*
 10 *the authority conferred by this section is exercised with*
 11 *respect to a country, the President is also authorized to*
 12 *impose controls on imports from that country to the*
 13 *United States.”;*

14 (2) *by adding at the end of paragraph (1) of sub-*
 15 *section (a) the following new sentence: “The President*
 16 *may not, under this section, prohibit or curtail the*
 17 *export or reexport of goods, technology, or other infor-*
 18 *mation in performance of a contract or agreement en-*
 19 *tered into before the date on which the President noti-*
 20 *fies Congress of his intention to impose controls pursu-*
 21 *ant to subsection (e) of this section on the export or*
 22 *reexport of such goods, technology, or other information*
 23 *to the intended destination or under any validated li-*
 24 *cence or other authorization issued under this Act.”;*

1 (3) in paragraph (2) of subsection (a) by striking
2 “one year” each place it appears and inserting in lieu
3 thereof, “6 months”;

4 (4) by striking subsection (b) and inserting in
5 lieu thereof the following:

6 “(b) *CRITERIA.*—The President may impose, expand,
7 or extend export controls under this section only if he deter-
8 mines that—

9 “(1) such controls are likely to achieve the intend-
10 ed foreign policy purpose, in light of other factors, in-
11 cluding the availability from other countries of the
12 goods or technology proposed for such controls;

13 “(2) such controls are compatible with the foreign
14 policy objectives of the United States, including the
15 effort to counter international terrorism, and with over-
16 all United States policy toward the country which is
17 the proposed target of the controls;

18 “(3) the reaction of other countries to the imposi-
19 tion or expansion of such export controls by the United
20 States is not likely to render the controls ineffective in
21 achieving the intended foreign policy purpose or coun-
22 terproductive to United States foreign policy interests;

23 “(4) such controls will not have an extraterritorial
24 effect on countries friendly to the United States ad-
25 verse to overall United States foreign policy interests;

1 “(5) the cost of such controls to the export per-
 2 formance of the United States, to the competitive posi-
 3 tion of the United States in the international economy,
 4 to the international reputation of the United States as
 5 a supplier of goods and technology, and to individual
 6 United States companies and their employees and com-
 7 munities, taking into account the effects of the controls
 8 on existing contracts, does not exceed the benefit to
 9 United States foreign policy objectives; and

10 “(6) the United States has the ability to enforce
 11 the proposed controls effectively.”;

12 (5) by amending subsection (c) to read as follows:

13 “(c) *CONSULTATION WITH INDUSTRY.*—The Secre-
 14 tary in every possible instance shall consult with and seek
 15 advice from affected United States industries and appropri-
 16 ate advisory committees established under section 135 of the
 17 Trade Act of 1974 before imposing any control under this
 18 section. Such consultation and advice shall be with respect to
 19 the criteria set forth in paragraphs (1) through (6) of subsec-
 20 tion (b) and such other matters as the Secretary considers
 21 appropriate.”;

22 (6) by striking subsection (e) and inserting in
 23 lieu thereof the following:

24 “(e) *NOTIFICATION OF CONGRESS.*—(1) The Presi-
 25 dent in every possible instance shall consult with the Con-

1 *gress before imposing any export control under this section.*
2 *Except as provided in section 7(g)(3) of this Act, the Presi-*
3 *dent shall not impose, expand, or extend such controls until*
4 *he has transmitted to the Congress a report specifying—*

5 “(A) *the purpose of the controls;*

6 “(B) *the determinations of the President with re-*
7 *spect to each of the criteria set forth in subsection (b)*
8 *and the bases for such determinations;*

9 “(C) *the nature and results of any alternative*
10 *means attempted under subsection (d), or the reasons*
11 *for imposing, extending, or expanding the control with-*
12 *out attempting any such alternative means; and*

13 “(D) *whether the President is also exercising the*
14 *authority to control imports as authorized by subsection*
15 *(a), and if the President is not exercising such authori-*
16 *ty, an explanation of the reasons therefor.*

17 “(2) *Such report shall also indicate how such controls*
18 *will further significantly the foreign policy of the United*
19 *States or will further its declared international obligations.*
20 *To the extent necessary to further the effectiveness of such*
21 *export control, portions of such report may be submitted on a*
22 *classified basis, and shall be subject to the provisions of sec-*
23 *tion 12(c) of this Act. Such report shall at the same time it is*
24 *submitted to the Congress also be submitted to the General*

1 *Accounting Office for the purpose of assessing the report's*
 2 *full compliance with the intent of this subsection.*

3 “(3) *In the case of an extension of controls occurring at*
 4 *a 12-month interval after the initial imposition or expansion*
 5 *of controls, such report shall be submitted in writing. In the*
 6 *case of an extension of controls at a 6-month interval follow-*
 7 *ing the submission of a written report, such report need not*
 8 *be in writing but shall be presented by the Secretary in testi-*
 9 *mony before the Senate Committee on Banking, Housing,*
 10 *and Urban Affairs and the House Committee on Foreign*
 11 *Affairs.”;*

12 (7) *in subsection (f), by striking the period at the*
 13 *end of the first sentence and inserting in lieu thereof a*
 14 *comma and “or on donations of items intended to meet*
 15 *basic human needs such as food, educational materials,*
 16 *seeds and hand tools, medicines and medical supplies,*
 17 *water resources equipment, clothing and shelter materi-*
 18 *als, and basic household supplies.”, and by striking the*
 19 *last sentence and inserting in lieu thereof the following:*
 20 *“This subsection shall not apply to any export control*
 21 *on medicine or medical supplies or food, except for do-*
 22 *nations of such items as those listed in the first sen-*
 23 *tence of this subsection, which is in effect on the date*
 24 *of enactment of the Export Administration Act Amend-*
 25 *ments of 1983.”;*

1 (8) in subsection (g), by inserting “(1)” after
2 “FOREIGN AVAILABILITY.—”, and by adding at the
3 end of the subsection the following new paragraphs:

4 “(2) Prior to any extension of controls pursuant to
5 paragraph (2) of subsection (a), the President shall evaluate
6 the results of his actions under paragraph (1) of this subsec-
7 tion and shall include the results of that evaluation in his
8 notification to Congress pursuant to subsection (e).

9 “(3) In the event that the President’s efforts under para-
10 graph (1) are not successful in securing such cooperation
11 during a 6-month period when controls imposed under this
12 section are in effect, in the subsequent 6-month period, if
13 such controls are extended, the Secretary shall take into ac-
14 count the foreign availability of goods or technology subject to
15 controls. If the Secretary affirmatively determines that a
16 good or technology is available in comparable quantity and
17 comparable quality from sources outside the United States to
18 countries subject to such controls so that denial of the license
19 would be ineffective in achieving the purposes of the controls,
20 then the Secretary shall issue a license for the export of such
21 goods or technology during the period of such foreign avail-
22 ability. The Secretary shall remove such goods or technology
23 from the list established pursuant to subsection (k) if he de-
24 termines such action is appropriate.

1 “(4) *In making a determination of foreign availability*
 2 *under paragraph (3) of this subsection the Secretary shall*
 3 *follow the procedures specified in section 5(f)(3) of this Act.”;*
 4 *and*

5 *(9) by striking “commodity” in the first sentence,*
 6 *and by striking the second sentence of subsection (k)*
 7 *and inserting in lieu thereof “The Secretary shall*
 8 *clearly identify on the control list which goods and*
 9 *technical data and countries or destinations are subject*
 10 *to which types of controls under this section.”.*

11 *SHORT SUPPLY CONTROLS*

12 *SEC. 7. Section 7 of the Export Administration Act of*
 13 *1979 is amended by striking subsection (j).*

14 *PROCEDURES FOR PROCESSING EXPORT LICENSE*

15 *APPLICATIONS*

16 *SEC. 8. Section 10 of the Export Administration Act of*
 17 *1979 is amended—*

18 *(1) by striking out “60” each place it appears*
 19 *and inserting in lieu thereof “40”;*

20 *(2) by striking out “90” each place it appears*
 21 *and inserting in lieu thereof “60”;*

22 *(3) by striking out “30” each place it appears*
 23 *and inserting in lieu thereof “20”;*

24 *(4) by inserting in paragraph (3) of subsection (f)*
 25 *after “the policies set forth in section 3 of this Act*

1 *which would be furthered by denial," the following:*
2 *"what if any modifications in or restrictions on the*
3 *goods or technology for which the license was sought*
4 *would allow such export to be compatible with controls*
5 *imposed under this Act, and which officers and em-*
6 *ployees of the Department of Commerce who are famil-*
7 *iar with the application will be made reasonably avail-*
8 *able to the applicant for considerations with regard to*
9 *such modifications or restrictions, if appropriate,";*

10 *(5) by striking paragraph (1) of subsection (g)*
11 *and inserting in lieu thereof the following:*

12 *"(1) Notwithstanding any other provision of this sec-*
13 *tion, the Secretary of Defense is authorized to review any*
14 *proposed export of any goods or technology, whether by single*
15 *or by multiple license, to any country to which exports are*
16 *controlled for national security purposes, or where the Secre-*
17 *tary of Defense, in consultation with the Secretary, deter-*
18 *mines that there is a clear risk of diversion of militarily criti-*
19 *cal goods or technology to proscribed destinations. Whenever*
20 *the Secretary of Defense determines that the export of any*
21 *such goods or technology will prove detrimental to the nation-*
22 *al security of the United States by making a significant con-*
23 *tribution to the military potential of any such country, or*
24 *constituting a clear risk of diversion to a proscribed destina-*
25 *tion of militarily critical goods or technology, the Secretary*

1 *of Defense shall recommend to the President that such export*
 2 *be disapproved.”;*

3 *(6) in paragraph (2) of subsection (g) by inserting*
 4 *after “category,” in the second sentence the following:*
 5 *“or where there is a clear risk of diversion of militarily*
 6 *critical goods or technology to proscribed destinations,”;*
 7 *and*

8 *(7) in paragraph (2) of subsection (g) by inserting*
 9 *after the first sentence the following: “If the Secretary*
 10 *and the Secretary of Defense are unable to concur on*
 11 *the types and categories of transactions or on any pro-*
 12 *posed export of goods or technology which should be re-*
 13 *ferred to the Secretary of Defense for review, the*
 14 *matter shall be referred to the President for*
 15 *resolution.”.*

16 VIOLATIONS

17 *SEC. 9. Section 11 of the Export Administration Act of*
 18 *1979 is amended—*

19 *(1) by inserting in subsection (a) after “violates”*
 20 *the following: “or conspires to or attempts to violate”;*

21 *(2) by striking in paragraph (1) of subsection (b)*
 22 *“exports anything contrary to” and inserting in lieu*
 23 *thereof “violates or conspires to or attempts to violate”;*

24 *(3) by inserting in paragraph (1) of subsection (b)*
 25 *after “benefit of” the following: “or that the destination*

1 *or intended destination of the goods or technology in-*
2 *volved is”, and by striking “restricted” and inserting*
3 *in lieu thereof “controlled”;*

4 *(4) by adding at the end of paragraph (1) of sub-*
5 *section (b) the following new sentence: “For purposes*
6 *of this subsection, a country to which exports are con-*
7 *trolled for national security purposes is one identified*
8 *pursuant to the determinations made in accordance*
9 *with section 5(b) of this Act.”;*

10 *(5) by inserting after paragraph (2) of subsection*
11 *(b) the following new paragraphs:*

12 *“(3) Whoever possesses any goods or technology with*
13 *the intent to export them contrary to this Act or any regula-*
14 *tion, order, or license issued thereunder shall be subject to the*
15 *penalties as provided in subsection 11(a), except for a nation-*
16 *al security violation which would be subject to the penalties*
17 *as provided in section 11(b)(1).*

18 *“(4) Nothing in this subsection or subsection (a) shall*
19 *limit the power of the Secretary to define by regulations vio-*
20 *lations under this Act.”;*

21 *(6) in subsection (c), by striking out “head and*
22 *all that follows through “thereof” and inserting in lieu*
23 *thereof “Commissioner of the United States Customs*
24 *Service of the Department of the Treasury (and offi-*

1 *cers or employees of the Service specifically designated*
2 *by the Commissioner)”;*

3 *(7) by adding at the end of subsection (c) the fol-*
4 *lowing new paragraphs:*

5 *“(3) In addition to any other authority under this Act,*
6 *the Secretary may revoke or suspend the authority to export*
7 *of any person convicted of a violation of any other provision*
8 *of Federal law arising out of the export of goods or technology*
9 *prohibited by or under this Act.*

10 *“(4) Whoever violates any national security control im-*
11 *posed under section 5 of this Act, or any regulations, order,*
12 *or license related thereto, or any regulation issued pursuant*
13 *to a multilateral agreement to control exports for national*
14 *security purposes, to which the United States is a party, may*
15 *be subject to such controls on the importing of goods or tech-*
16 *nology into the United States or territories and possessions*
17 *as the President may prescribe.”;*

18 *(8) by inserting in subsection (e) after “subsection*
19 *(c)” the words “or any amounts realized from the for-*
20 *feiture of property interest or proceeds forfeited pursu-*
21 *ant to subsection (g)”, and by inserting after “refund*
22 *any such penalty” the words “imposed pursuant to*
23 *subsection (c)”;*

24 *(9) by striking out the second sentence of subsec-*
25 *tion (f);*

1 (10) by redesignating subsection (g) as subsection
2 (i) and inserting the following new subsections:

3 “(g) *FORFEITURE OF PROPERTY INTEREST AND PRO-*
4 *CEEDS.—(1) Whoever has been convicted of a national secu-*
5 *rity export control violation under subsection (a) or (b) shall,*
6 *in addition to any other penalty, forfeit to the United*
7 *States—*

8 “(A) *any of his interest in, security of, claim*
9 *against, or property or contractual rights of any kind*
10 *in the goods or technology that were the subject of the*
11 *violation;*

12 “(B) *any of his interest in, security of, claim*
13 *against, or property or contractual rights of any kind*
14 *in property that was used to facilitate the commission*
15 *of the violation; and*

16 “(C) *any of his property constituting, or derived*
17 *from, any proceeds obtained directly or indirectly as a*
18 *result of such violations.*

19 “(2) *The procedures in any criminal forfeiture under*
20 *this section, and the duties and authority of the courts of the*
21 *United States and the Attorney General with respect to any*
22 *criminal forfeiture action under this section or with respect to*
23 *any property that may be subject to forfeiture under this sec-*
24 *tion, are to be governed by the provisions of section 1963 of*
25 *title 18, United States Code.*

11 (11) by striking “or” after “(d),” in subsection (i)
12 as redesignated, and inserting after “(f)” the following:
13 “, (g), or (h)”.

14

17 (1) in subsection (a), by inserting “(1)” after
18 “GENERAL AUTHORITY.—”;

24 (3) in subsection (a), by striking out “head” and
25 all that follows through “thereof”) and inserting in lieu

1 *thereof "Commissioner of the United States Customs*
2 *Service of the Department of the Treasury (and offi-*
3 *cers or employees of the Service specifically designated*
4 *by the Commissioner)";*

5 *(4) by adding at the end of subsection (a) the fol-*
6 *lowing new paragraphs:*

7 *"(2) An officer of the United States Customs Service of*
8 *the Department of the Treasury or other person authorized to*
9 *board or search vessels who has reasonable cause to suspect*
10 *that any goods or technology have been or will be exported*
11 *from the United States in violation of any Act governing*
12 *exports may—*

13 *"(A) stop, search, and examine, within or without*
14 *his district, a vehicle, vessel, aircraft, or person, on*
15 *which or whom he has reasonable cause to suspect*
16 *there are any such goods or technology, whether by the*
17 *person in possession or charge or by, in, or upon such*
18 *vehicle, vessel, aircraft, or otherwise;*

19 *"(B) search, wherever found, any package or con-*
20 *tainer in which he has reasonable cause to suspect*
21 *there are any such goods or technology;*

22 *"(C) seize and secure for trial any such goods or*
23 *technology on or about vehicle, vessel, aircraft, or*
24 *person, or in such package or container.*

1 “(3)(A) *An officer of the United States Customs Serv-*
 2 *ice of the Department of the Treasury or other person author-*
 3 *ized to board or search vessels may, while in the performance*
 4 *of, and in connection with, official duties, make arrests with-*
 5 *out warrant in the enforcement of the provisions of any Act*
 6 *governing exports. The arrest authority conferred by this sub-*
 7 *section is in addition to any arrest authority under other*
 8 *laws.*

9 “(B) *If such officer or person has reasonable cause to*
 10 *suspect that any goods or technology have or would have been*
 11 *exported from the United States in violation of any Act gov-*
 12 *erning exports, the officer or person shall refer such matter to*
 13 *the Secretary of the Treasury, or his designee, or the Attor-*
 14 *ney General for civil or criminal action, respectively, in ac-*
 15 *cordance with this section.”;*

16 *(5) in the first sentence of paragraph (3) of sub-*
 17 *section (c), by striking out “department or agency with*
 18 *enforcement responsibilities under this Act” and insert-*
 19 *ing in lieu thereof “United States Customs Service of*
 20 *the Department of the Treasury (and officers or em-*
 21 *ployees of the Service specifically designated by the*
 22 *Commissioner)”;* and

23 *(6) by inserting in subsection (c)(3): “, including*
 24 *information pertaining to subjects of ongoing investiga-*
 25 *tions,” after “enforcement of this Act” in the first sen-*

1 tence; and by adding at the end thereof, the following:
2 *“The Secretary shall consult on a continuing basis*
3 *with the Attorney General, the Commissioner of Cus-*
4 *toms, and the heads of other departments and agencies*
5 *which obtain information subject to this paragraph to*
6 *facilitate the sharing of such information.”.*

7 ANNUAL REPORT

8 *SEC. 11. Section 14 of the Export Administration Act*
9 *of 1979 is amended—*

10 (1) by inserting "AND QUARTERLY" after
11 "ANNUAL" in the section heading; and

12 (2) by adding at the end thereof the following:

13 “(d) *FOREIGN AVAILABILITY REPORT.*—The Secre-
14 *tary and the Secretary of Defense shall jointly prepare and*
15 *transmit to the Committee on Banking, Housing, and Urban*
16 *Affairs of the Senate and the Committee on Foreign Affairs*
17 *of the House of Representatives quarterly reports on the oper-*
18 *ation and improvement of the Government’s ability to assess*
19 *foreign availability, including but not limited to training of*
20 *personnel, use of computers, and utilization of Foreign Com-*
21 *mmercial Service Officers.”.*

22 UNDER SECRETARY OF COMMERCE FOR EXPORT

23 ADMINISTRATION

24 *SEC. 12. (a) Section 15 of the Export Administration*
25 *Act of 1979 is amended—*

1 (1) by inserting "ADMINISTRATIVE AND" before
2 "REGULATORY" in the caption;

3 (2) by designating the matter following "SEC.
4 15." as subsection (b); and

5 (3) by inserting after "SEC. 15." the following:

6 “(a) The President shall appoint, by and with the
7 advice and consent of the Senate, an Under Secretary of
8 Commerce for Export Administration who shall carry out all
9 functions of the Secretary of Commerce under this Act which
10 were delegated to the office of the Assistant Secretary of
11 Commerce for Trade Administration prior to the effective
12 date of the Export Administration Act Amendments of 1983
13 and such other functions as the Secretary may prescribe.”.

14 (b) Section 5314 of title 5, United States Code, is
15 amended by inserting "Under Secretary of Commerce for
16 Export Administration," before "and Under".

17 *DEFINITIONS*

18 *SEC. 13. Section 16 of the Export Administration Act*
19 *of 1979 is amended—*

20 (1) by striking paragraph (4) and inserting in
21 lieu thereof the following:

22 “(4) the term ‘technology’ means technological or
23 technical data, and shall include information or know-
24 how of any kind that can be used or adapted for use in
25 the design, production, manufacture, repair, overhaul,

1 *processing, engineering, development, operation, main-*
 2 *tenance, or restoration of goods or commodities, includ-*
 3 *ing computer software. Information or know-how may*
 4 *take tangible form, such as models, prototypes, draw-*
 5 *ings, sketches, diagrams, blueprints, or manuals, or*
 6 *take an intangible form, such as training or technical*
 7 *services. Technological data shall also include all goods*
 8 *or commodities that will be used in the industrial ap-*
 9 *plication of the technological information, regard-*
 10 *less of the end-use classification of the goods or*
 11 *commodities;”;*

12 *(2) in paragraph (3), by inserting after “article,”*
 13 *“natural or manmade substance,”; and*

14 *(3) by redesignating paragraph (5) as paragraph*
 15 *(8), and by inserting the following new paragraphs:*

16 *“(5) the term ‘export of goods’ means—*

17 *“(A) an actual shipment or transmission of*
 18 *goods out of the United States, or*

19 *“(B) an actual shipment or transmission of*
 20 *goods, or portions thereof, originally exported from*
 21 *the United States to any destination other than*
 22 *that indicated to the appropriate United States*
 23 *authority as the initial destination of the goods at*
 24 *the time of the original export from the United*
 25 *States;”;*

1 *liaison with the business community and others affected by*
 2 *the export licensing process.”.*

3 *AMENDMENT TO INTERNATIONAL EMERGENCY ECONOMIC*

4 *POWERS ACT*

5 *SEC. 15. Section 203(a)(1) of the International Emer-*
 6 *gency Economic Powers Act (50 U.S.C. 1202) is amend-*
 7 *ed—*

8 *(1) by striking out “and” at the end of paragraph*
 9 *(A);*

10 *(2) by inserting “and” at the end of paragraph*
 11 *(B); and*

12 *(3) by adding the following new paragraph:*

13 *“(C) impose controls on exports of goods or tech-*
 14 *nology from United States companies, or their subsid-*
 15 *iaries or licensees operating outside the United*
 16 *States;”.*

17 *AUTHORIZATION*

18 *SEC. 16. Section 18 of the Export Administration Act*
 19 *of 1979 is amended by striking paragraph (1) of subsection*
 20 *(b) and inserting in lieu thereof:*

21 *“(1) \$11,610,000 for each of the fiscal years*
 22 *1984 and 1985, and”.*

1 *liaison with the business community and others affected by*
 2 *the export licensing process.”.*

3 *AMENDMENT TO INTERNATIONAL EMERGENCY ECONOMIC*

4 *POWERS ACT*

5 *SEC. 15. Section 203(a)(1) of the International Emer-*
 6 *gency Economic Powers Act (50 U.S.C. 1202) is amend-*
 7 *ed—*

8 *(1) by striking out “and” at the end of paragraph*
 9 *(A);*

10 *(2) by inserting “and” at the end of paragraph*
 11 *(B); and*

12 *(3) by adding the following new paragraph:*

13 *“(C) impose controls on exports of goods or tech-*
 14 *nology from United States companies, or their subsid-*
 15 *iaries or licensees operating outside the United*
 16 *States;”.*

17 *AUTHORIZATION*

18 *SEC. 16. Section 18 of the Export Administration Act*
 19 *of 1979 is amended by striking paragraph (1) of subsection*
 20 *(b) and inserting in lieu thereof:*

21 *“(1) \$11,610,000 for each of the fiscal years*
 22 *1984 and 1985, and”.*

1 *TERMINATION DATE*

2 *SEC. 17. Section 20 of the Export Administration Act*
3 *of 1979 is amended by striking out “1983”, and inserting in*
4 *lieu thereof “1989”.*

5 *AMENDMENT TO MAGNUSON ACT*

6 *SEC. 18. Clause (viii) of section 201(e)(1)(E) of the*
7 *Magnuson Fishery Conservation and Management Act (16*
8 *U.S.C. 1821(e)(1)(E)) is amended by inserting “fishery”*
9 *before “matters”.*

Calendar No. 217

98TH CONGRESS
1ST SESSION

S. 979

[Report No. 98-170]

A BILL

To amend and reauthorize the Export Administration
Act of 1979

MAY 23 (legislative day, MAY 16), 1983

Reported with an amendment